

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

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Michael H. Milby, Clerk

MARK NEWBY, *et al*, Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

ENRON CORP., *et al*.

Civil Action No. H-01-3624
(Consolidated)

CLASS ACTION

**RESPONSE OF THE STATE RETIREMENT SYSTEMS GROUP
TO THE MOTION TO STRIKE THE STATE RETIREMENT SYSTEM GROUP'S
RESPONSE TO THE SUR-REPLY OF THE NEW YORK CITY PENSION
FUNDS AND THE FLORIDA STATE BOARD OF ADMINISTRATION OR,
IN THE ALTERNATIVE, REPLY THERETO**

The New York City Pension Funds and the Florida State Board of Administration ("FSBA") (collectively referred to as the "Florida Group") ask this Court to strike the State Retirement System Group's Response to the Florida Group's Sur-reply. In their motion, the Florida Group concedes that the Florida State Board of Administration ("FSBA") purchased 90% or more of its Enron shares through Alliance Capital, an FSBA investment advisor with a representative on Enron's board. The Florida Group also fails to dispute that FSBA and the State of Florida have publicly proclaimed that they are planning to sue Alliance in an individual, non-class case. The Florida Group contends that the State Group has misinterpreted the Florida Group's earlier briefing on the subject of its Alliance-related losses. The Florida Group asserts that it has never said that its Alliance-related losses were only 10% of its total losses. However, the Florida Group has stated:

"Even if one were to put aside any of the losses that the FSBA incurred in connection with the purchases made through Alliance on which the State Group and the Milberg

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Group focus, the NYC Funds and the FSBA still have losses in excess of \$409 million. . . ." see FSBA/NYC Funds Sur-Reply."

The Florida Group now explains that, while Alliance accounted for 90% of FSBA's overall losses, Alliance's purchase of Enron stock on FSBA's behalf between October 19 and November 16, 2001 accounts for only 10% of FSBA's losses.

The State Group welcomes this clarification. But all of FSBA's purchases are relevant to the Florida Group's fitness to serve as lead plaintiff. Moreover, the clarification, while welcome, does not begin to address the many problems faced by the Florida Group as putative lead plaintiff. The Florida Group is disabled because FSBA may not be able to prove deception, the defendants will have unique defenses available to them against FSBA and FSBA is planning to pursue individual non-class claims which may seek recovery from the same sources of limited funds otherwise available to the class FSBA seeks to lead.

CONCLUSION

For the foregoing reasons, the State Retirement Group respectfully requests that the Florida Group's motion to strike be denied.

Dated: February 14, 2002

Respectfully submitted,

CUNNINGHAM DARLOW ZOOK
& CHAPOTON, LLP

By: Tom A. Cunningham *SWPL*
Tom A. Cunningham
1700 Chase Tower
600 Travis
Houston, Texas 77002
(713) 255-5500

Proposed Liaison Counsel

CHITWOOD & HARLEY
Martin D. Chitwood
Special Assistant Attorney General
2900 Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 873-3900

JEFFREY O.C. LANE
Senior Assistant Attorney General (WA)

Proposed Lead Counsel

OF COUNSEL:

THURBERT E. BAKER
Attorney General of Georgia

DANIEL M. FORMBY
Deputy Attorney General (GA)

JOHN B. BALLARD, JR.
Senior Assistant Attorney General (GA)

EMILY P. HITCHCOCK
Assistant Attorney General (GA)

BETTY D. MONTGOMERY
Attorney General of Ohio

CALFEE, HALTER & GRISWOLD LLP
Robert N. Rapp
Mark I. Wallach
Albert J. Lucas
1650 Fifth Third Center
21 E. State Street
Columbus, OH 43215
(614) 621-1500



CHRISTINE O. GREGOIRE
Attorney General of Washington

DAVID E. WALSH
Deputy Attorney General (WA)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served upon all counsel of record via facsimile on this 14th day of February, 2002.

See attached Service List


Tom Cunningham

Richard J. Zask

Elizabeth Baird
O'Melveny & Myers
Fax: 202-383-5414

James D. Baskin
Baskin Law Firm
Fax: 512-322-9280

Martin D. Beirne, Jr.
Beirne, Maynard & Parsons
Fax: 713-960-1527

Steven Bierman
Sidley Austin Brown & Wood
Fax: 212-906-2021

Thomas Bilek
Hoeffner & Bilek
Fax: 713-227-9404

Steven Cauley
Cauley Geller Bowman & Coates
Fax: 501-312-8505

James E. Coleman, Jr.
Carrington Coleman Sloman & Blumenthal
Fax: 214-855-1333

Mark Dearman
Dearman & Gerson
Fax: 954-915-9191

Richard B. Drubel
Boies Schiller & Flexner
Fax: 603-643-9010

John Emerson, Jr.
The Emerson Firm
Fax: 281-488-8867

William B. Federman
Federman & Sherwood
Fax: 405 239-2112

Richard M. Frankel
Hackerman Frankel & Manela
Fax: 713-528-2509

Robin C. Gibbs
Gibbs & Bruns
Fax: 713-650-8805

H. Bruce Golden
Golden & Owens
Fax: 713-223-5002

Roger B. Greenberg
Schwartz Junell
Fax: 713-752-0327

J. Clifford Gunter, III
Bracewell & Patterson
Fax: 713-221-1212

Robin L. Harrison
Campbell Harrison & Wright
Fax: 713-752-2330

G. Sean Jez
Fleming & Associates
Fax: 713-621-9638

Sharon Katz
Davis Polk & Wardwell
Fax: 212-450-3633

Jeffrey R. Krinsk
Finkelstein & Krinsk
Fax: 619-238-5425

William S. Lerach
Milberg Weiss
Fax: 619-231-7423

Jack E. McGehee
McGehee & Pianelli
Fax: 713-868-9393

John J. McKetta III
Graves Dougherty Hoaron & Moody
Fax: 512-478-1976

Frank W. Morgan
Fax: 281-367-2453

Karen L. Morris
Morris & Morris
Fax: 302-426-0406

Raymond L. Niblock
Fax: 501-444-7608

Eric Nichols, Jr.
Beck Redden & Seccret
Fax: 713-951-3720

Jack C. Nickens
Nickens Lawless & Flack
Fax: 713-654-7690

Charles R. Parker
Hill & Parker
Fax: 713-868-1275

William Kelly Puls
Puls Taylor & Woodson
Fax: 817-338-1416

Saul Roffe
Sirota & Sirota
Fax: 212-425-9093

Lynn L. Sarko
Keller Rohrbach
Fax: 202-623-3384

Samuel P. Sporn
Schoengold & Sporn
Fax: 212-267-8137

Stephen D. Susman
Susman Godfrey
Fax: 713-654-6670

Joe R. Whatley, Jr.
Whatley Drake
Fax: 205-328-9669

R. Paul Yetter
Yetter & Warden
Fax: 713-238-2002

Richard J. Plezia
Abraham Watkins Nicnols, et al.
713/325-0827

Derek Emge
Emge & Associates
619-595-1480

Jonathon T. Suder
Friedman Young Suder & Cooke
817-334-0401

Thomas W. Sankey
Sankey & Luck
713-223-7737

William C. Slusser
Claudia Wilson Frost
Slusser & Frost
713-860-3333

William F. Martson, Jr.
Tonkon Torp, LLP
503-972-3705

Martin D. Chitwood
Chitwood & Harley
404-876-4476

Neil L. Selinger
Lowey Dannenberg, et al.
914-997-0035

James M. Finberg
Leiff Cabracer, et al.
415-956-1008

Gwendolyn Giblin
Gold Bennett et al.
415-777-5189

Thomas G. Shapiro
Shapiro Haber
617-439-0134

Robert Finkel
Wolf Popper
212-486-2093

Christopher Lovell
Lovell & Stewart
212 719 4677

David Scott
Scott & Scott
860-537-4432

Richard Speirs
Zwerling Schachter
212 371 5969

Rusty Hardin
Rusty Hardin & Associates
(713) 652-9800

Daniel Krasner
Wolf Haldenstein
212 545 4653

Sherie Savett
Berger & Montague
215 875 4604

Jay Eisenhofer
Grant & Eisenhofer
302-622-7100

Andrew Barroway
Schiffrin & Barroway
610-667-7056

Ronald Kormanik
Sydow, Kormanik, Carrigan & Eckerson
713 752 2199

Michael Behn
Futterman & Howard
312-427-1850

Roger Kirby
Kirby McInerney
212 751-2540

Earnest Wotring
Connelly Baker
713 980 1733

Glenn DeValerio
Berman DeValerio
617 542 1194

Vincent Cappucci
Entwistle & Cappucci
212 894 7273

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ORDER

BE IT REMEMBERED that on this _____ day of _____, 2002, came on for consideration the Motion to Strike the State Retirement System Group's Response to the Sur-Reply of the New York City Pension Funds and the Florida State Board of Administration or, in the Alternative, Reply Thereto, and the Court, after considering the pleadings on file, and hearing the arguments of counsel, if any, is of the opinion that said Motion should be DENIED. It is therefore

ORDERED, ADJUDGED and DECREED that the Motion to Strike the State Retirement System Group's Response to the Sur-Reply of the New York City Pension Funds and the Florida State Board of Administration or, in the Alternative, Reply Thereto is DENIED.

SIGNED this _____ day of _____, 2002

JUDGE PRESIDING